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BULLETIN

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**Subject: APPARENT PRACTICES THAT VIOLATE THE MEDICARE SUPPLEMENT
OPEN ENROLLMENT REQUIREMENTS**

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (as codified at 42 U.S.C. section 1395ss(s)(2)(A)) and WAC 284-66-077 provide for a six-month open enrollment period for Medicare beneficiaries 65 years of age or older who first enroll for benefits under Medicare Part B. These provisions state that Medicare supplement insurance issuers may not deny or condition the issuance or effectiveness of, nor discriminate in the pricing of a Medicare supplement policy during the open enrollment period.

It has come to the attention of the Commissioner that some Medicare supplement issuers have taken actions which are contrary to the intent of the open enrollment requirement. These actions include the following:

1. Creating a disincentive to sell Medicare supplement policies during the open enrollment period by establishing compensation arrangements that result in producers receiving substantially lower or no compensation for policies sold pursuant to the open enrollment provision.
2. Applying pre-existing condition limitation waiting periods only to those policies issued pursuant to the open enrollment provision.
3. Engaging in premium rating practices which result in higher premiums solely for those policies issued pursuant to the open enrollment provision.

The Commissioner believes the practices outlined above violate the intent and spirit of OBRA '90 and violate WAC 284-66-077, which is patterned after the federal law.

Additionally, issuers and their agents may not be providing prospective insureds with the appropriate range of choice during the period of open enrollment. We understand OBRA '90 to require that issuers must make available any and all Medicare supplement forms to all prospective insureds at the best-available rate regardless of the health of the applicant during

the open enrollment period. As an example, if an issuer makes a non-smoking rate available, that rate must be applied during the open enrollment period whether or not the applicant smokes.

Issuers of Medicare supplement insurance and their agents should examine their practices. Improper practices must cease and corrective action must be taken on all Medicare supplement policies and certificates issued on or after November 5, 1991, which violate the open enrollment requirements of WAC 284-66-077 and OBRA '90.

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